U.S. Department of Labor Office of Administrative Law Judges
Washington, D.C.

In the Matter of

Date Issued: April 17, 1992

Gayadrie Enterprises, Inc.
Petitioner

Case No.: 92-TLC-6

v.

U.S. DEPARTMENT OF LABOR
Respondent

Appearances: Lawrence E. Davis, Esq.
For the Petitioner

Annaliese Impink, Esq.
For the Respondent

BEFORE: NICODEMO DE GREGORIO
Administrative Law Judge

DECISION AND ORDER

Gayadrie Enterprises (Petitioner) has requested expedited administrative review, pursuant to 20 C.F.R. §655.112, of a decision imposing a penalty under 20 C.F.R. §655.110(c). The decision is reversed.

I

On October 22, 1992, Petitioner filed an application for temporary alien labor certification, in order to bring workers from India to "assist in the preparation, growing and harvesting of various native East Indian vegetables". Administrative File (AF) at 100-112. The application, as subsequently amended, required one month experience in the "Job Offered." AF at 49. The job title was Farmworker-Vegetable (agr.) II. Ibid. On January 2, 1992 the Certifying Officer granted certification for eight job opportunities as Farmworker, Vegetable (agric.) II. AF 15.

On January 15, 1992, the Regional Administrator (RA), Employment and Training Administration, U.S. Department of Labor was notified by the Texas Employment Commission that Petitioner had rejected eight U.S. workers with extensive experience in agricultural work, solely on the ground that they did not have experience with East Indian vegetables. On February 25, 1992, the RA notified Petitioner that its refusal to hire the U.S. workers was not consistent with Petitioner's Job Order, and in violation of 20 C.F.R 655.106(e). AF at 7. The F2A determined that Petitioner must comply with special procedures designed to enhance the

recruitment of U.S. workers, as a condition for certification in the next year. Ibid. Petitioner seeks review of this finding of violation and consequent penalty.

II

This case hinges on the interpretation of the experience requirement stated in Petitioner's application as an occupational qualification for the job offered. The issue is whether experience in the "Job Offered" means experience derived from the performance of the duties specified in the job offer, or simply experience derived from the performance of generic agricultural work activities described in the Dictionary of Occupational Titles, under the occupation of Farmworker, Vegetable II, without regard to the particular vegetables involved. Stated differently, the issue is whether U.S. workers with extensive agricultural experience, e.g., with potatoes, watermelons and cantaloupe, see Respondent's Brief at 9, met the one month experience Petitioner required for the preparation, growing, and harvesting of various Indian vegetable plants, such as guvar, valor, papdi, and paravar, see AF at 50.

In cases arising under the permanent labor certification program, it has been held that experience in the "job offered" means experience in performing the duties of the job offered, not experience in performing work tasks embraced in a generic job title. See Integrated Software Systems, 88-INA-200 (July 6, 1988). In the instant case, Petitioner's letter of October 22, 1991, accompanying the application for temporary labor certification, permits no doubt as to the kind of experience Petitioner desired:

> Mr. Patel hopes to bring various workers from India and then train local workers over the next several years in the various techniques of caring for and harvesting the Indian vegetables. He would like to have a strong local work force to pick from during the various peak times of the year. Indian vegetables are quite unique and each has its own growing peculiarities. In order for a person to be qualified to care for and harvest these plants they must have experience with the various plants and their vegetables.

AF at 100.

The inadequacy of the experience derived from growing domestic vegetables was the very reason given for the need to bring workers from India. And, for all that appears in the record before me, Petitioner was not challenged to substantiate the appropriateness of this experience requirement.

Accordingly, I conclude that Petitioner's rejection of U.S. workers lacking specific experience with Indian vegetables was in accordance with the regulations. The PA's

determination finding a violation of the regulations and imposing special recruitment procedures as a condition for certification in the next year is **REVERSED**.

NICODEMO DE GREGORIO
Administrative Law Judge

NDG/sjn